**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH**
**AT HYDERABAD**

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

**THE HON'BLE MR JUSTICE B.PRAKASH RAO**

**WRIT PETITION NO : 16212 of 1997**

Between:

M/s. Delta Agro Chemicals Limited, ISC No.276,

Rep.by its Managing Director,

S.N.Palem, Near Hanuman Junction,

Krishna District.

**..... PETITIONER**

AND

1. Chief Engineer(Electricity),

Vijayawada Zone, Near PWD Grounds,

Vijayawada-2, Krishna District.

2. Superintending Engineer,

(Assessment Circle), A.P.S.E.B.,

Vijayawada-2, Krishna District.

3. Assistant Divisional Engineer(Operations),

Hanuman Junction, Krishna District.

4. Asst. Accounts Officer(Electricity Revenue Office),

Nuzividu(PO), Krishna District.

**.....RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Order or direction, more particularly, one in the nature of Writ of Certiorari calling for the records of the Proceedings in No.CEE/VZ/VJA/MRT/AE/V.15/96/D.No.74/97, dated 21-6-1997 of the first respondent partly confirming the order of the second respondent in No.SAT 8068/D.GDV/P/F 2108/1642, dated:31-5-1996 and quash the same and all its consequential orders including that of 4th respondent in proceedings No.JAO-I/nbs-IV/F.TE/Doc/1534, dated 28-6-1997 as being illegal, contrary to law and vitiated by errors apparent on the face of record and further direct the respondents to refund the amount of Rs.1,85,804.40ps., with interest @ 24% per annum which was illegally recovered from the petitioner and pass such other order or orders as the Court may deem fit and proper.

**Counsel for the Petitioner :MR.M.V.DURGA PRASAD**
**Counsel for the Respondents : SMT.M.VINOBHA DEVI (Standing Counsel for APSEB.**

**The Court made the following :**

**ORDER:**

Heard the learned Counsel for the petitioner and also the learned standing counsel appearing on behalf of the respondents.

The petitioner, which is an industry, filed this writ petition *inter alia* seeking to assail the proceedings in No.CEE/VZ/VJA/MRT/AE/V.15/96/D.No.74f/97, dated 21-6-1997 of the first respondent by way of this writ petition questioning the assessment in regard to the unauthorized use of the load beyond the contract as per the proceedings dated 21-06-1997 passed by the first respondent herein confirming the orders of the second respondent dated 31-05-1996 and arriving the loss at Rs.2,11,124-80ps.

The case of the petitioner is that the unit was acquired in the year 1987 and in

order to make use of waste husk for the fuel, they purchased HT connection in the year May, 1993, whereas just two months prior to the inspection, the sanctioned load of 110 HP was connected. However, on the inspection conducted on 22-06-1995, it is now alleged that the petitioner has unauthorizedly exceeded the sanctioned load and ultimately it is found that the total load was 148.52 HP and thus there is a misused load, which comes to 38.52 HP and, therefore the_impugned action. Though, the show cause notice was given on 18-07-1995, and also on 01-09-1995, the petitioner has explained in detail on 18-09-1995. Initially the provisional assessment was made for Rs.2,55,154-80ps. However, the same was confirmed in the final orders on 21-6-1997. In appeal, the appellate authority reduced the same to Rs. 2,11,124-80ps.

The learned Counsel for the petitioner submits that having regard to the fact that the load was connected two months prior to the date of inspection, the entire calculation as sought to be made by the respondents while making the assessment for a period of one year at a stretch is only unsustainable. This argument is repelled on behalf of the respondents herein.

Considering the submissions made and also on perusal of the entire record, the only question that calls for consideration is whether the petitioner is liable to the assessment as made on the allegation of excess use of the load as sanctioned by the respondents. There is no dispute to the fact that the inspection was made on 22-6-1995 and the total connected load was recorded as 148.52 HP, whereas the contracted load was only 110.00 HP. Therefore, it is alleged by the respondents that the load misused is 38.52 HP. The case of the petitioner is that the contracted load of 110.00 was expired hardly two months back and therefore the question of misusing to the extent, now pointed out, is not correct.

Admittedly, on a reading of the impugned proceedings, it is seen that while taking into consideration the load misused at 38.52 HP, the calculations were

sought to be raised on the recorded consumption from September, 1994 to 22-6-1995 and ultimately, the estimated consumption was sought to be arrived at. There is no serious dispute to the fact that the contracted load was sanctioned admittedly just two months prior to the inspection, and this aspect has apparently not been considered by any of the authorities while making assessment. No doubt, on meter reading, the entries go to show that there is a misuse of contracted load. However, that itself cannot be a ground to make assessment against the petitioner by taking back for a period of one year and on the basis of the recorded consumption during such period. Certainly, the recorded consumption which form part of the basis for assessment, does not pertain to the contracted load of 110.00 HP and necessarily it has to be much on the lower side and the petitioner cannot blame nor can be proceeded against for any such misuse of contracted load when such load was not in existence.

In the circumstances, it has to be seen that the entire assessment as made is wholly unsustainable. It is now submitted by the learned counsel for the petitioner that out of Rs.2,55,154-80ps, the petitioner has already paid 50% of the amount, i.e. Rs. 1,85,804-40ps. By taking into consideration such payment made and also having regard to the fact that the inspection was made as long back as on 22-6-1995, it would suffice in the interests of justice to restrict the liability of the petitioner to the extent of the amount which has already been paid and therefore, the amount arrived by the appellate authority for Rs.2,11,124-80ps stands reduced to Rs.1,85,804-40ps.

Accordingly, the writ petition is partly allowed.

30.12.2004

RNS/CVM

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Thirtieth day of December Two thousand and four.

REGISTRAR

To

To

1. Chief Engineer(Electricity),

Vijayawada Zone, Near PWD Grounds,

Vijayawada-2, Krishna District.

2. Superintending Engineer,

(Assessment Circle), A.P.S.E.B.,

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